AGENDA ITEM 6
May 14, 2008
Action

MEMORANDUM

TO: County Council

FROM: Michael Faden, Senior Legislative Attorney

SUBJECT: **Action:**
Resolution to change fuel/energy tax rates
Resolution to modify the fuel/energy tax rates to add a carbon/greenhouse gas surtax

Management and Fiscal Policy Committee/ Transportation, Infrastructure, Energy, and Environment Committee recommendation: adopt carbon surtax resolution proposed by Councilmember Floreen (see ©4). Place items on operating budget reconciliation list to be funded by increased energy tax revenue.

Background A resolution to increase fuel/energy tax rates, sponsored by the Council President, was introduced on April 15, 2008 (see ©1-2). This resolution would increase the rates currently in effect to produce $11.1 million more revenue. This resolution was introduced as a placeholder to allow the Council, if necessary, to adjust the rates of the fuel/energy tax.

A resolution to increase certain fuel/energy tax rates to reflect carbon dioxide and other greenhouse gas generation, sponsored by Councilmember Floreen, was also introduced on April 15, 2008 (see ©3-5). This resolution would increase the rates currently in effect to produce $11.1 million more revenue (see revenue data table on ©5). Specifically, this resolution would increase the tax rates on electricity, fuel oil, and steam by 10%, coal by 20%, and natural and liquefied petroleum gas by 5%, to generally reflect relative rates of carbon dioxide and other greenhouse gas generation.

A public hearing on both resolutions was held on May 6. See testimony and related letters, ©6-16. A joint Management and Fiscal Policy Committee/Transportation, Infrastructure, Energy, and Environment Committee worksession on both resolutions was held on May 9.

Issues/Committee recommendations

1) Should the fuel/energy tax be increased? If more revenue is needed to fund the FY09 operating budget, should the energy tax be one source, instead of, for example, increasing the property tax? Those who opposed raising the energy tax at this time include the County Executive (see ©6-7); the primary supplier of electricity in the County, Pepco (see ©8-9); anti-tax activist Robin Ficker, who spoke at the public hearing; and the Agricultural Advisory Committee and Agricultural Preservation Advisory Board (see ©13-16).[1] The Executive's testimony emphasized that the energy tax is not progressive and disproportionately burdens lower and fixed-income residents, unlike the property tax increase with a generous offset credit that he proposed for FY09.

However, because the energy tax is imposed more heavily on non-residential and non-agricultural users, including federal and state agencies, Finance Department staff estimated (see ©17) that households and agricultural users will in the aggregate pay only about 1/3 of the tax next year although they consume about 46% of the energy. (This tax is charged per unit of energy consumed, and is not based on the price of each commodity; if it were, it would be a sales tax, which the County cannot enact under state law.) At the joint Committee worksession, Councilmember Andrews emphasized that the energy tax is spread over a broader set of payers than the property tax; about 70% of the energy tax is paid, under current rates, by non-residential taxpayers, including federal agencies, while about 70% of the property tax is paid by residential taxpayers.[2] Under the current energy tax rates the average household would pay $101 next year.

2) If so, how much more revenue should be raised? Both rate resolutions before the Council would raise about $11.1 million more revenue in FY09. The proposed rates (see ©2 or 4) can easily be adjusted pro rata to meet any revenue target the Council selects.

Joint Committee recommendation: increase fuel/energy tax rates to raise additional $11.1 million in FY09.

3) Should the tax rates be revised to reflect relative carbon generation? Unlike the current rates and the proposed rates in the Council President's placeholder resolution, which are based on "the equivalent energy content of each form of fuel or energy for a particular category of use" as County Code §52-14(a) requires, Councilmember Floreen's proposed surtax rates (see ©4) generally reflect relative carbon dioxide and other greenhouse gas generation.[3] Specifically, her resolution would increase the tax rates on coal (which is rarely if ever sold to consumers these days) by 20%, electricity, fuel oil, and steam by 10%, and natural and liquefied petroleum gas by 5%.

---

[1]In their testimony on ©13-16, representatives of the agricultural community urged that agricultural users be totally exempted from paying the energy tax. In 2003 the applicable law and rate resolution were amended to place agricultural users in the residential rate category. Exempting them would require further legislation, which is beyond the scope of these rate resolutions.

[2]In a letter received after the joint Committee worksession (see ©24-26), State Delegate Al Carr urged the Council to exempt municipal governments from this tax, arguing that it burdens basic government services such as street lights. As with the proposed agricultural exemption noted previously, exempting municipalities or putting them in another rate category would require further County legislation, which is beyond the scope of these rate resolutions.

[3]County Code §52-14(a) only requires the tax rates to "impose an equal *or substantially equal* tax on the equivalent energy content of each form of fuel or energy for a particular category of use". Council staff believes that the proposed carbon surtax meets the "substantially equal" standard and thus is consistent with §52-14. If any doubt remains, §52-14 could be amended to expressly allow the tax rates to be based, in whole or part, on each fuel or energy source's carbon content.

The County Executive (see ©6-7) said the concept of a carbon tax deserves further discussion, but not in the middle of the budget process. The County chapter of the Sierra Club and another County resident (see ©10-12) urged the Council to take this "important and logical next step" toward reducing greenhouse gas emissions. The most important caveat to this approach, as Councilmember Leventhal and others have stressed, is that the increased rates for electricity in the proposed carbon surtax do not disaggregate the different sources of electricity – e.g. coal, nuclear, wind, biomass, trash, etc. In an email message to Councilmember Floreen (see ©18-19), local Sierra Club chair David Hauck offered a more precise measurement of the relative carbon generation rates of the different energy sources. His central thesis was that electricity supplied by Pepco should be taxed at a higher rate because coal produces 54% of it.[4]

As a spreadsheet created by Finance Department economist David Platt at Council staff's request shows (see ©20), revising the electricity and other tax rates as Mr. Hauck suggested would raise an additional $7.3 million above the $11.1 million revenue increase that Councilmember Floreen originally proposed. If the Council wants to more closely reflect these more precise carbon generation rates but maintain the original $11.1 million revenue target, Mr. Platt's rates can be adjusted accordingly.

Joint Committee recommendation: adopt surtax rates (primarily 10% for electricity, 5% for natural gas) proposed by Councilmember Floreen.

While the joint Committee decided not to adopt a sunset date for this rate schedule, Committee members noted that the Sustainability Working Group, created recently by Bill 32-07, was directed by County Code §18A-15 to evaluate the costs and benefits of converting the fuel energy tax to a carbon tax and submit its findings and recommendations to the Executive and Council by January 15, 2009, including a recommended methodology to convert the fuel energy tax to a carbon tax.

4) If the energy tax is increased, how should the added revenue be used? This question would essentially be answered in the operating budget process; unlike a law, the attached rate resolutions cannot direct County spending. As Mr. Hauck noted (see ©10-11), the revenue could be used to reduce other taxes, fund the operating budget, and/or fund new and existing energy conservation and renewable energy programs. Any increased or new spending resulting from this revenue would, Council staff assumes, go on the operating budget reconciliation list. In particular, if as Councilmember Leventhal has suggested, those who buy mainly or only "clean" electricity should not be disadvantaged by a higher carbon surtax, restarting and augmenting the Clean Energy Rewards program would be an appropriate adjunct to the revised energy tax.

---

[4]Pepco is by far the primary supplier of electricity in the County. If necessary, Council staff can research what share of the County market the other 2 suppliers have, and whether their mix of fuel sources differs significantly from Pepco's.

Joint Committee recommendation: apply most of the new revenue from this rate increase to reduce the property tax. Use the rest as follows, and place on the operating budget reconciliation list:

- $500,000 to cover the revenue lost in FY09 from the energy conservation and solar/geothermal tax credits enacted in Bill 33-07;
- $70,000 to augment the energy tax rebate for low-income households eligible for the Maryland Home Energy Assistance Program (MEAP) to cover their added cost of this tax;[5] and
- $1.5 million for a Climate Change Implementation Non-Departmental Account to cover the cost of implementing the climate change package enacted on April 22.

In addition, the Committee recommended that this revenue be used to fund the $300,000 already placed on the reconciliation list to restart the Clean Energy Rewards Program.

This packet contains:	Circle #
Council President Resolution	1
Rate schedule (across-the-board increase)	2
Councilmember Floreen Resolution	3
Rate schedule (carbon surtax)	4
Revenue data for carbon surtax	5
Public hearing testimony	6
Energy tax estimates (current rates)	17
Relative carbon dioxide emissions (Hauck email)	18
Revised rate spreadsheet from Finance staff	20
County energy assistance programs	21
Letter from Delegate Carr re municipal exemption	24

F:\LAW\TOPICS\Taxes\Fuel-Energy\FY09 Rates\Action Memo.Doc

[5]For a table of County energy assistance programs, see ©21-23.

Resolution No. ______________
Introduced: April 15, 2008
Adopted: ______________

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President

SUBJECT: Fuel/energy tax – rates

Background

1. Section 52-14 of the County Code levies a tax on persons transmitting, distributing, manufacturing, producing, or supplying electricity, gas, steam, coal, fuel oil, or liquefied petroleum gas in the County.

2. Section 52-14 also provides that the County Council may amend the fuel/energy tax rates by resolution, after a public hearing advertised as required by Section 52-17. A public hearing was held on this resolution on (date).

3. The Council finds that it is fair and equitable to continue different rates for fuels and energy transmitted, distributed, manufactured, produced, or supplied for residential and agricultural purposes and for non-residential purposes.

Action

The County Council for Montgomery County, Maryland, approves the following resolution:

1. On and after July 1, 2008, the fuel/energy tax rates levied under Section 52-14 of the County Code are as shown on Schedule A, attached to this resolution.

2. This Resolution supersedes Resolution 15-1005.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council Date

F:\LAW\TOPICS\Taxes\Fuel-Energy\FY09 Rates\FY09 Resolution.Doc

Attachment Resolution No:

SCHEDULE A (starting in FY2009)

Increase residential and agricultural rates 9.13%.

(a) For fuel-energy transmitted, distributed, manufactured, produced, or supplied for residential and agricultural purposes:

	+9.13%
FUEL-ENERGY	**TAX RATE**
Electricity (per kilowatt hr)	$0.0051824809
Gas (per therm)	$0.0467559003
Steam (per therm)	$0.0584598191
Coal (per ton)	$12.1342978386
Fuel oil (per gallon)	
No. 1	$0.0639591068
No. 2	$0.0663501015
No. 3	$0.0663501015
No. 4	$0.0679042480
No. 5	$0.0692192951
No. 6	$0.0707734416
Liquefied petroleum gas (per pound)	$0.0101019524

(b) For fuel-energy transmitted, distributed, manufactured, produced, or supplied for non-residential purposes:

FUEL-ENERGY	
Electricity (per kilowatt hr)	$0.0137337736
Gas (per therm)	$0.1239033352
Steam (per therm)	$0.1549185207
Coal (per ton)	$32.1538967768
Fuel oil (per gallon)	
No. 1	$0.1694916331
No. 2	$0.1758277689
No. 3	$0.1758277689
No. 4	$0.1799462572
No. 5	$0.1834311319
No. 6	$0.1875496202
Liquefied petroleum gas (per pound)	$0.0267701738

CHS: F:\Sherer\Excel\Energy Tax Rates.xls, FY09, 4/11/2008, 3:39 pm

Resolution No. __________
Introduced: April 15, 2008
Adopted: __________

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Floreen

SUBJECT: Fuel/energy tax – rates – carbon surtax

Background

1. Section 52-14 of the County Code levies a tax on persons transmitting, distributing, manufacturing, producing, or supplying electricity, gas, steam, coal, fuel oil, or liquefied petroleum gas in the County.

2. Section 52-14 also provides that the County Council may amend the fuel/energy tax rates by resolution, after a public hearing advertised as required by Section 52-17. A public hearing was held on this resolution on May 6, 2008.

3. The Council finds that it is fair and equitable to continue different rates for fuels and energy transmitted, distributed, manufactured, produced, or supplied for residential and agricultural purposes and for non-residential purposes.

4. The Council also finds that basing the rates of this tax for each energy source generally on the relative contribution of that source to the production of carbon dioxide and other "greenhouse gases" would better reflect the environmental impact of using each energy source and to some degree encourage the public to distinguish among energy sources on this basis.

Action

The County Council for Montgomery County, Maryland, approves the following resolution:

1. On and after July 1, 2008, the fuel/energy tax rates levied under Section 52-14 of the County Code must include a carbon surtax as shown on Schedule A, attached to this resolution.

2. This Resolution supersedes Resolution 15-1005.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council   Date

F:\LAW\TOPICS\Taxes\Fuel-Energy\FY09 Rates\Carbon Tax FY09 Resolution.Doc

Attachment Resolution No:

SCHEDULE A (starting in FY2009)

Electricity, oil, steam	+10.0%
Gas	+5.0%
Coal	+20.0%

(a) For fuel-energy transmitted, distributed, manufactured, produced, or supplied for residential and agricultural purposes:

FUEL-ENERGY	TAX RATE
Electricity (per kilowatt hr)	$0.0052237964
Gas (per therm)	$0.0449864339
Steam (per therm)	$0.0589258692
Coal (per ton)	$13.3429464000
Fuel oil (per gallon)	
No. 1	$0.0644689980
No. 2	$0.0668790540
No. 3	$0.0668790540
No. 4	$0.0684455904
No. 5	$0.0697711212
No. 6	$0.0713376576
Liquefied petroleum gas (per pound)	$0.0097196463

(b) For fuel-energy transmitted, distributed, manufactured, produced, or supplied for non-residential purposes:

Electricity (per kilowatt hr)	$0.0138432612
Gas (per therm)	$0.1192142417
Steam (per therm)	$0.1561535534
Coal (per ton)	$35.3566170000
Fuel oil (per gallon)	
No. 1	$0.1708428447
No. 2	$0.1772294931
No. 3	$0.1772294931
No. 4	$0.1813808146
No. 5	$0.1848934712
No. 6	$0.1890447926
Liquefied petroleum gas (per pound)	$0.0257570627

1

	FY 08 Tax Rate	FY 08 Units* (adjusted for accruals)	FY 08 Revenues	FY 08 Revenues Increase from prior yr	FY 09 Tax Rate	FY 09 Units* (adjusted for accruals)		FY 09 Revenues
NON-RESIDENTIAL								
Fuel-Oil								
#1	$0.1553116770	108,107	$16,790	-5.1%	$0.1708428447	110,053	10.0%	$18,802
#2 & #3	$0.1611177210	6,234,321	$1,004,460	-14.6%	$0.1772294931	6,346,539	10.0%	$1,124,794
#4	$0.1648916496	0	$0		$0.1813808146	0	10.0%	$0
#5	$0.1680849738	0	$0		$0.1848934712	0	10.0%	$0
#6	$0.1718589024	0	$0		$0.1890447926	0	10.0%	$0
L P Gas	$0.0245305359	4,814,277	$118,097	-19.0%	$0.0257570627	4,900,934	5.0%	$126,234
Electricity	$0.0125847830	5,827,110,421	$73,332,920	4.6%	$0.0138432612	5,931,998,409	10.0%	$82,118,204
Natural Gas	$0.1135373730	126,880,702	$14,405,702	0.5%	$0.1192142417	129,164,554	5.0%	$15,398,254
TOTAL		5,965,147,828	$88,877,968					$98,786,287
RESIDENTIAL								
Fuel-Oil								
#1	$0.0586081800	24,306	$1,425	-21.2%	$0.0644689980	24,744	10.0%	$1,595
#2 & #3	$0.0607991400	9,950,845	$605,003	-4.6%	$0.0668790540	10,129,960	10.0%	$677,482
#4	$0.0622232640	0	$0		$0.0684455904	0	10.0%	$0
#5	$0.0634282920	0	$0		$0.0697711212	0	10.0%	$0
#6	$0.0648524160	0	$0		$0.0713376576	0	10.0%	$0
L P Gas	$0.0092568060	14,373,697	$133,055	21.1%	$0.0097196463	14,632,424	5.0%	$142,222
Electricity	$0.0047489058	4,967,485,376	$23,590,120	4.4%	$0.0052237964	5,056,900,113	10.0%	$26,416,217
Natural Gas	$0.0428442228	176,781,062	$7,574,047	-9.8%	$0.0449864339	179,963,121	5.0%	$8,095,899
TOTAL		5,168,615,287	$31,903,649					$35,333,415
		0.464228961	0.264143253					
TOTAL RESIDENTIAL & NON-RESIDENTIAL								
Fuel-Oil								
#1		132,413	$18,215	-6.6%		134,797		$20,397
#2 & #3		16,185,166	$1,609,462	-11.1%		16,476,499		$1,802,276
#4		0	$0			0		$0
#5		0	$0			0		$0
#6		0	$0			0		$0
L P Gas		19,187,975	$251,151	-1.8%		19,533,358		$268,456
Electricity		10,794,595,797	$96,923,040	4.5%		10,988,898,521		$108,534,420
Natural Gas		303,661,764	$21,979,749	-3.3%		309,127,676		$23,494,153
			$120,781,617	$122,098,649				$134,119,702
GRAND TOTAL				**$119,470,000**				**$132,700,000**
				0.978471104				$121,600,000
GROWTH RATE								**$11,100,000**

5

/

Resolution to amend Fuel/Energy tax rates
(sponsored by Council President Knapp)
Resolution to modify the Fuel/Energy tax rates to add carbon/greenhouse gas surtax
(sponsored by Councilmember Floreen)

Public Hearing

May 6, 2008

Good evening. My name is Joseph Beach. I am the Director of the Office of Management and Budget and I am here to testify on behalf of the County Executive on the Resolution to amend the Fuel/Energy tax rates and the Resolution to modify the Fuel/Energy tax rates to add a carbon/greenhouse gas surtax.

The Executive believes that the idea of converting the Fuel/Energy tax, which is based on the amount of energy in a fuel, to a carbon tax, which is based on the amount of carbon in a fuel, merits further discussion. However, that discussion should not occur in the midst of budget deliberations. The merits of a carbon tax, including the complexities associated with imposing it on energy distributors (as is the current Fuel/Energy tax) and the consequences for different types of consumers need to be fully evaluated. Accordingly, the Executive recommends that the Council defer action on the Resolution to modify the Fuel/Energy tax rates to add a carbon/greenhouse gas surtax until after the Council has acted on the FY09 budget.

We do not believe an increase to the fuel energy tax is appropriate at this time because County residents are currently paying record high prices for electricity, gas, and other fuels, and will pay an additional 8% for water and sewer service next year if the Council approves WSSC's recommended budget.

The Executive submitted a balanced budget to Council that will fund critical services. There is no need to impose an additional tax burden on County residents at this time, particularly in light of recent tax increases at the State level.

While the Executive found it necessary to recommend a property tax increase to preserve essential services, that increase is structured in a progressive manner to limit the burden on lower valued residential properties. The Fuel/Energy tax is not progressive and burdens lower and fixed-income residents disproportionately.

The Executive is open to exploring the possibility of modifying the Fuel/Energy tax so that it serves as an incentive to purchasing clean energy. However, we believe the resolution currently before the Council, which would impose surtaxes on natural gas (5%), coal (20%), and electricity, fuel oil, and steam (10%) does not accomplish that goal. The resolution would increase the cost of electricity generated by wind power by 10%, the same increase that would be imposed on electricity generated by gas or coal. It does not modify the Fuel/Energy tax to reflect the actual carbon content of each energy source.

Again, the Executive supports the concept behind Councilmember Floreen's resolution, but he believes the detail and structure of the proposed modifications require further analysis. We would be happy to work with Council staff to develop proposals that meet our common environmental protection goals.

3

pepco

A PHI Company

Kim M. Watson
Vice President - Maryland Affairs

701 Ninth Street, NW
Suite 9212
Washington, DC 20068

202 872-2524
202 872-2032
kmwatson@pepco.com

May 6, 2008

The Honorable Michael Knapp
Council President
Montgomery County Council
100 Maryland Avenue, 6th Floor
Rockville, Maryland 20850

Re: Resolution to amend Fuel/Energy tax rates & Resolution to modify Fuel/Energy tax rates to add a carbon/greenhouse gas surtax

Dear Council President Knapp,

Pepco appreciates the opportunity to comment on the Montgomery County Council's proposed increases to the Fuel/Energy tax. The company understands the challenge of the budget shortfall currently facing the County. However, at a time of increasing concern about the rising costs of energy, Pepco would caution against a pattern of continually taxing electricity bills to balance the budget.

As recently as 2003, the County Council tripled the rate of the Fuel/Energy tax to increase revenues from the tax from $25 million to $75 million for fiscal year 2004 and fiscal year 2005. In 2007, Pepco incurred $87.7 million in Fuel/Energy taxes. This made the Montgomery County Fuel/Energy tax the second highest non-income tax levied on Pepco in 2007.

Under the proposed Fuel/Energy surtax, Pepco would be responsible for $8.7 million of the $11.1 million in additional revenues the Council hopes to raise. If this tax increase is approved, Pepco's expected contribution of over $96.5 million will ultimately be funded by the relatively small population of Pepco customers in Montgomery County.

8

We know many of our customers remain concerned about their energy bills. In consideration of these customers, Pepco urges the County Council to avoid raising additional revenues through energy bills and to seek alternative funding solutions wherever possible.

Sincerely,

Kim Watson

4

SIERRA CLUB
FOUNDED 1892

Montgomery County Group

May 6, 2008

Hon. Michael Knapp, President
and the Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Re: Testimony on Resolution to include a carbon surcharge in the fuel/energy tax rates.

Good evening. My name is David Hauck and I am the Chair of the Sierra Club's 6,600-member Montgomery County Group. I want to thank the Council for unanimously approving last month seven bills that in a variety of ways are aimed at reducing greenhouse gas emissions throughout the County.

The Resolution now before you to assess a carbon surcharge on Montgomery County's energy tax rate is an important and logical next step towards achieving the County's goal (specified in Bill 32-07) of reducing countywide greenhouse gas emissions by 80 percent by 2050.

As Councilmember Leventhal has pointed out, the global warming bills passed last month will require a minimum of $1.5 million to implement the first steps. In addition, Councilmember Leventhal has frequently noted that the very popular and successful Clean Energy Rewards program has been suspended because it ran out of funds halfway through its first year.

What these two examples underscore is that progress in reducing the consumption of carbon-based fuels—achieved through energy efficiency and conservation--and switching to clean, renewable energy, doesn't just happen. It takes public education campaigns, incentives and changes in land use planning and transportation policies. And these actions cost money.

Fortunately, more and more Montgomery County residents recognize this. A survey conducted by the Dept. of Environmental Protection in December 2007, asked county residents, "Would you be willing to pay a little more on your water or energy bill each month if you know those funds would be dedicated for the environment here in the County such as clean energy and clean water programs?" 57 percent said they would.

The proposed carbon surcharge would generate $11.1 million in additional revenue and would add about $10 a year to the cost of a household's utility bills. The Council has a choice on what to do with this additional revenue. It could be used:

- to reduce other taxes by a comparable amount—in other words, be "revenue-neutral;

- to help close this year's budget gap; or

- ***to fund new and expand existing programs*** that would reduce energy use by residents and businesses and accelerate the shift to clean, renewable energy.

The Sierra Club Montgomery County Group strongly recommends that the $11.1 million be invested in new and expanded programs that result in greater energy efficiency and increased demand for clean energy. It's what the majority of residents have said they want. Plus, as homes and businesses become more energy efficient, this investment will help to reduce the financial impact of higher energy prices in the future. And, because energy taxes tend to be regressive, I also urge that a portion of revenue generated by a carbon surcharge be invested in expanded efforts to increase the energy efficiency of low- and moderate-income households as well as low-income and inefficient multi-family housing to counteract this.

Sierra Club members are working now to help reduce greenhouse gas emissions in the County. We are holding energy efficiency house meetings, are helping to promote the Maryland Home Performance with Energy Star program, and have just begun a program where residents can observe a home energy audit and, hopefully, decide to sign up for one for their own homes. We're very pleased with what the Council has done to date and we hope you will adopt a carbon surcharge and invest the funds in new and expanded programs to combat climate change.

Sincerely,

David Hauck
Chair
Sierra Club Montgomery County Group

301-270-5826

Concerning a Resolution to Add a Carbon/Greenhouse Gas Surtax

An important purpose of this resolution is to provide additional revenue for environmentally useful activities such as energy conservation. I would like to address the question of why it is desirable that this additional revenue be based on the amount of carbon dioxide produced. This is commonly referred to as a carbon tax.

Although the production of carbon dioxide causes a negative environmental impact, there is generally no extra cost to the household or business that is responsible for the production of the carbon dioxide. Energy costs have traditionally been based on supply and demand, and taxes on energy have traditionally been set simply to raise revenue. The concept of a carbon tax is based on 2 principles:

1) It is appropriate for government to charge the producer of a negative environmental impact, and to use these funds for mitigation.

2) The tax provides an incentive to produce less carbon dioxide, thereby serving to lessen the negative impact.

This approach makes use of market forces. Those who can reduce carbon dioxide production cheaply will be more likely to do so than those whose costs for similar reduction are high, thus tending to minimize the overall cost.

To be fully effective, a carbon tax should be large enough to allow significant mitigation and also large enough to provide a significant incentive. Furthermore, to be fair, it should be levied on all jurisdictions involved, and to be practical, other taxes should be reduced. In the long run, I would like to see this happen, but this resolution should be considered as a good first step to the establishment of an appropriate carbon tax. The amount of the proposed tax is rather modest, and therefore can only provide modest mitigation and a modest incentive to reduce carbon dioxide production. The carbon tax, however, does provide 2 significant benefits beyond simply raising revenue for environmentally useful activities:

1) It will have the educational value of emphasizing to citizens that production of carbon dioxide involves a real cost to society.

2) It will establish a precedent for a fair method of allocating these costs.

In summary, producing additional revenue now for environmentally useful activities is important, and producing this revenue by means of a carbon tax provides additional benefits.

Submitted by:

Gerald Ehrenstein
7502 Nevis Road
Bethesda, MD 20817
301-229-0127

AGRICULTURAL ADVISORY COMMITTEE

May 6, 2008

The Honorable Michael Knapp,
Montgomery County Council President
100 Maryland Avenue
Rockville, Maryland 20850

Dear Council President Knapp:

RE: Resolution to increase fuel-energy tax rates
Resolution to add carbon/greenhouse gas surtax

On behalf of the Montgomery County Agricultural Advisory Committee (AAC), please accept this letter as our testimony against the Resolutions to amend the fuel-energy tax rates and add a carbon/greenhouse gas surtax.

For the record, the AAC does not support an increase in the fuel-energy tax rates or the addition of a carbon/greenhouse gas surtax. <u>We hereby respectively request that Montgomery County amend Chapter 52-14 (a) of the County Code to incorporate additional wording to the existing exemption that will exempt fuels and other forms of energy used for agricultural purposes from this fuel-energy tax and proposed carbon/greenhouse gas surtax altogether.</u>

In 2003, the AAC testified on Expedited Bill 34-03 which allowed the Council to set different fuel-energy tax rates for fuel and energy delivered for various categories of uses including a new agricultural tax rate that is equal to the residential tax rate. This Bill 34-03 was approved at the request of the AAC because it was our firm belief, then and more so today, that increases in this tax negatively impact the agricultural community and place farmers at a competitive disadvantage with farmers in neighboring counties that do not have a fuel-energy tax.

The legislative intent of Expedited Bill 34-03 was carried out through Resolution 15-412 and Executive Regulation 33-03T. This legislation created the program for the fuel-energy tax for Agricultural Producers and is administrated by the Department of Economic Development Agricultural Services Division. This program requires agricultural producers to be recertified biannually. We currently have 198 certified agricultural producers effective as of January 2008. <u>This program represents an administrative requirement to certify agricultural producers that could be incorporated into the County Code to exempt them from the fuel-energy tax and the proposed carbon/greenhouse gas surtax as long as they are certified by the DED-Agricultural Services Division.</u>

Department of Economic Development • Agricultural Services Division
18410 Muncaster Road • Derwood, Maryland 20855 • 301/590-2823, FAX 301/590-2839

The Agricultural community is extremely thankful to the County Government for the $1.5 million in funding that was approved for the 2007 Agricultural Emergency Assistance Program as a result of the drought of 2007. Many farmers have used this much-needed funding to bridge the gap between the difficulties of the 2007 growing season and their optimism and hopes for the 2008 season. Examples for the use of these funds include the purchase of fertilizer and fuel, both of which are much more expensive this year and represent an increased cost of production.

Please do not add to the growing costs of agricultural production in Montgomery County by increasing this fuel-energy tax and imposing the carbon/greenhouse gas surtax. The Council should be sensitive to the farmers' plight and recognize that agriculture is a different kind of industry that cannot always pass on the increasing costs of production to the purchaser of agricultural products.

Please exempt certified agricultural producers from the fuel-energy tax and proposed carbon/greenhouse gas surtax as this will truly demonstrate the County's commitment to agriculture at a time when the farmers need it the most.

The Agricultural Advisory Committee thanks the County Council for this opportunity to present our views on the County's fuel-energy tax and proposed carbon/greenhouse gas surtax.

Sincerely,

Wade Butler, jvc

Wade Butler, Chairman

FuelEnergytaxletter(aac08)

AGRICULTURAL PRESERVATION ADVISORY BOARD

May 5, 2008

The Honorable Michael Knapp, President
Montgomery County Council
COB, 6th Floor
Rockville, Maryland 20855

Re: Public Hearing: Resolutions Fuel/Energy Tax Rates/Carbon-Greenhouse Gas Surtax

Dear Council President Knapp:

Please accept this correspondence as the Montgomery County Agricultural Preservation Advisory Board's (APAB) written testimony regarding the Council Resolutions for raising Fuel/Energy Tax Rates and imposing a Carbon-Greenhouse Gas Surtax on agricultural operations. The APAB respectfully requests this testimony be entered as part of the public record for the hearing scheduled for May 6, 2008 at 7:30 pm.

The APAB is concerned about the timing of the proposed increases to the fuel/energy tax rates as well as the proposed Carbon-Greenhouse Gas surtax. The impact these increased tax rates will have on the Montgomery County Agricultural Industry will be even greater during these increasingly difficult economic times. Nearly every segment of our society is struggling with the rising cost of energy as well as other necessities, and not surprisingly are having great difficulty making ends meet. As the costs of doing business continue to increase, agriculture's ability to absorb these costs dwindles each day.

The agricultural industry is very important to the economy of Montgomery County and though it represents a significant economic contributor, it is fragile and subject to constant threats to its viability. The drought of 2007 coupled with historically high fuel energy costs and a weakened economy place unprecedented pressures upon to the sustainability of the County's agricultural industry. Agribusiness here may face challenges not witnessed since the Great Depression.

The agricultural industry within Montgomery County has been resilient and has withstood many adversities over the years. The APAB is very concerned that rising costs across the entire agricultural industry will threaten agriculture's very existence. Sustainable agriculture within Montgomery County hangs in the balance, more so today then ever before. The agricultural industry needs the Council's continued support and leadership at this critical juncture by addressing head-on the impact of these resolutions on agriculture.

Given the state of our economy and its impact on Montgomery County's agricultural industry, the APAB believes it is time, once and for all, to consider an exemption from the fuel/energy tax as well as an exemption from the proposed Carbon-Greenhouse Gas Surtax for certified Montgomery County agricultural producers.

Agricultural Services Division
18410 Muncaster Road · Derwood, Maryland 20855 · 301/590-2823, FAX 301/590-2839

Montgomery County places high intrinsic value on the agricultural reserve. Aside from the public policy decisions that were made over 28 years ago for the protection of this valuable agricultural resource, farmers have played the pivotal role of making these important resources economically viable and sustainable. A simple but important premise must be stated: it isn't farmland without farmers. If we cannot provide meaningful financial relief during serious economic times, then the farmer will disappear from this nationally revered agricultural reserve landscape.

The APAB is also concerned about imposing a greenhouse gas surtax on the agricultural industry. The Scientific Community believes increased atmospheric concentrations of carbon dioxide and other "greenhouse" gases have contributed to the gradual rise in global temperatures over the last 50 years. While many human interactions on our landscape contribute to carbon dioxide and other "greenhouse" gas emissions entering our atmosphere, agricultural practices that are being implemented on our farmland are viewed as viable options for absorbing excess carbon. Key agricultural best management practices such as conservation tillage on croplands, grazing land management, and conservation or riparian buffers are being implemented by Montgomery County farmers, through both educational and direct technical assistance offered through Maryland Cooperative Extension and the Montgomery Soil Conservation District. It appears counter-intuitive to impose this surtax on an industry that provides positive benefits for reducing these types of greenhouse gases.

The agricultural community needs the County Council's support more than ever. Providing an exemption from the fuel/energy tax and Carbon-Greenhouse Gas Surtax for certified agricultural producers will help ease the burden of growing production costs and help ensure that agriculture will remain an important part of the County's heritage as well as a prosperous component of our future.

Please accept these comments as official APAB testimony. It is our hope that you will consider and implement the changes we are recommending.

Sincerely,

W. Drew Stabler, Chairman
Agricultural Preservation Advisory Board

cc: County Council

FUEL / ENERGY TAX ESTIMATES
MONTGOMERY COUNTY, MARYLAND

	FY07	FY08	FY09
Current Law			
Collect	$118,853,224		
% change	1.3%		
Forecast		FORECAST	
Old (11/07)		$119,450,000	$121,510,000
New (03/08)		$119,470,000	$132,700,000
Difference		$20,000	$11,190,000
Growth Factor		0.5%	1.8%
% change			
Old (11/07)		0.5%	1.7%
New (03/08)		0.5%	1.8%
Growth Factors :			
- Households (Calendar Year)	0.9%	1.4%	1.3%
- Businesses (1)	2.4%	1.9%	2.7%
Total	3.3%	3.3%	4.0%
Weighted Average			
Growth Factor :	2.0%	1.7%	2.3%
- Add factor (weather and consumption)	-0.6%	-1.2%	-0.5%
Agricultural Adjustment	0.0%	0.0%	0.0%
Rate change			
Total	1.4%	0.5%	1.8%

	FY07 est.	FY08 est.	FY09 est.
Energy Tax from Residential	$33,060,846	$33,232,412	$36,912,540
Number of households	355,425	360,425	365,125
Average Tax per Household	$93	$92	$101
Energy Tax from Non-Residential	$86,506,252	$86,237,588	$95,787,460

Montgomery County Department of Finance April 2008

Faden, Michael

From: Floreen's Office, Councilmember

Sent: Friday, April 25, 2008 10:43 AM

To: Faden, Michael

Subject: FW: Relative rates of carbon dioxide emissions for different fuels

Jocelyn Rawat
Aide to Councilmember Nancy Floreen
240-777-7967

-----Original Message-----
From: David Hauck [mailto:hauck_d@msn.com]
Sent: Thursday, April 24, 2008 7:28 PM
To: Floreen's Office, Councilmember
Subject: Relative rates of carbon dioxide emissions for different fuels

Nancy,

If my explanations and calculations are unclear, just give me a call.

Desired outcome: In our conversation you said you wanted the proposed carbon surtax to reflect the relative amounts of carbon dioxide that each of the different types of fuel subject to the energy tax releases into the atmosphere. For example, if fuel oil generates 2 times as much carbon dioxide as natural gas does to produce the same amount of energy, and the carbon surtax on natural gas is 5%, then the carbon surtax on fuel oil should be 10% (2 times 5%).

How do different fuels compare in terms of the amount of carbon dioxide they release?

The best way to answer this is to select a standard measure of energy--we'll use one million BTUs as the standard measure--and then see how many pounds of CO2 are emitted by each of the fuels when they are used to generate one million BTUs of energy.

You can find these numbers at the U.S. Dept. of Energy http://www.eia.doe.gov/oiaf/1605/coefficients.html I took them from this table and reproduced them below.

Fuel Type	**lbs. of CO2 per million BTUs**
Fuel Oil	161
L P Gas	139
Natural Gas	118
Coal (direct combustion)	210

Electricity (these numbers are higher than the numbers for natural gas or direct combustion of coal to reflect the inefficiencies in the process of converting fuel to electricity and distributing power through the grid.)

--from natural gas only	388
--from coal only	694
--from fuel oil only	628

18

Pepco supplied electricity: 415 (this electricity is generated from a variety of fuels: 54% from coal; 5% from natural gas; 3.5% from a blend of fuels; remainder from renewables and nuclear power which generate zero lbs. of CO2 per million BTUs)

<u>What should the carbon surcharge be for each type of fuel?</u>

Because fuel oil's lbs. of CO2 per million BTUs is 36% higher than natural gas's (161 divided by 118), then it's carbon surtax should be 36% higher as well.

Using the same logic:

L P Gas's surtax should be 18% higher than natural gas's (139 divided by 118)

Pepco supplied electricity's surtax should be 250% higher than natural gas's (415 divided by 118)

The surtax for "steam" would be identical to whatever fuel is used to generate the steam (either fuel oil, natural gas or coal).

<u>If the carbon surtax for natural gas is 5.0%, then the other fuels' surtaxes should be:</u>

Natural Gas 5.0%
Fuel Oil 6.8% (36 percent more that natural gas' 5.0%)
L P Gas 5.9%
Pepco electricity 17.6%

If you plug these new carbon surtax numbers into the spreadsheet that projects what FY09 Revenues from the energy tax (with the proposed surtax) would be, **<u>the increase in the electricity carbon surtax from 10% to 18% would generate an additional $8 million in revenue above the projected $11.1 million</u>**.

The decrease in the fuel oil surtax from 10% to 7% would only reduce expected revenue by $50,000.

Revenue from the natural gas and L P Gas surtax would be essentially unchanged.

I sure hope this was the question you were asking (smile!). Let me know if it was.

David

FUEL / ENERGY TAX ESTIMATE

	FY 08 Tax Rate	FY 08 Units* (adjusted for accruals)	FY 08 Revenues	FY 08 Revenues Increase from prior yr.	FY 09 Tax Rate	FY 09 Units* (adjusted for accruals)		FY 09 Revenues	FY 09 Revenues Increase from prior yr
NON-RESIDENTIAL									
Fuel-Oil									
#1	$0.1553116770	108,107	$16,790	-5.1%	$0.1658728710	110,053	6.8%	$18,255	8.7%
#2 & #3	$0.1611177210	6,234,321	$1,004,460	-14.6%	$0.1720737260	6,346,539	6.8%	$1,092,073	8.7%
#4	$0.1648916496	0	$0		$0.1761042818	0	6.8%	$0	
#5	$0.1680849738	0	$0		$0.1795147520	0	6.8%	$0	
#6	$0.1718589024	0	$0		$0.1835453078	0	6.8%	$0	
L P Gas	$0.0245305359	4,814,277	$118,097	-19.0%	$0.0259778375	4,900,934	5.9%	$127,316	7.8%
Electricity	$0.0125847830	5,827,110,421	$73,332,920	4.6%	$0.0147997047	5,931,998,409	17.6%	$87,791,825	19.7%
Natural Gas	$0.1135373730	126,880,702	$14,405,702	0.5%	$0.1192142417	129,164,554	5.0%	$15,398,254	6.9%
TOTAL		5,965,147,828	$88,877,968					$104,427,722	
RESIDENTIAL									
Fuel-Oil									
#1	$0.0586081800	24,306	$1,425	-21.2%	$0.0625935362	24,744	6.8%	$1,549	8.7%
#2 & #3	$0.0607991400	9,950,845	$605,003	-4.6%	$0.0649334815	10,129,960	6.8%	$657,774	8.7%
#4	$0.0622232640	0	$0		$0.0664544460	0	6.8%	$0	
#5	$0.0634282920	0	$0		$0.0677414159	0	6.8%	$0	
#6	$0.0648524160	0	$0		$0.0692623803	0	6.8%	$0	
L P Gas	$0.0092568060	14,373,697	$133,055	21.1%	$0.0098029576	14,632,424	5.9%	$143,441	7.8%
Electricity	$0.0047489058	4,967,485,376	$23,590,120	4.4%	$0.0055847132	5,056,900,113	17.6%	$28,241,337	19.7%
Natural Gas	$0.0428442228	176,781,062	$7,574,047	-9.8%	$0.0449864339	179,963,121	5.0%	$8,095,899	6.9%
TOTAL		5,168,615,287	$31,903,649					$37,139,999	
TOTAL RESIDENTIAL & NON-RESIDENTIAL									
Fuel-Oil									
#1		132,413	$18,215	-6.6%		134,797		$19,804	8.7%
#2 & #3		16,185,166	$1,609,462	-11.1%		16,476,499		$1,749,846	8.7%
#4		0	$0			0		$0	
#5		0	$0			0		$0	
#6		0	$0			0		$0	
L P Gas		19,187,975	$251,151	-1.8%		19,533,358		$270,757	7.8%
Electricity		10,794,595,797	$96,923,040	4.5%		10,988,898,521		$116,033,162	19.7%
Natural Gas		303,661,764	$21,979,749	-3.3%		309,127,676		$23,494,153	6.9%
			$120,781,617	$122,098,649				$141,567,722	$143,111,410
GRAND TOTAL				$119,470,000				$140,000,000	
				0.978471104	CE's Recommended Budget ▸			$121,600,000	
GROWTH RATE					Difference CE's Recommended Budget ▸			$18,400,000	
					10% increase (Floreen proposal) ▸			$11,100,000	
					Hauck package minus Floreen proposal ▸			*$7,300,000*	

20

Non-Emergency Utility Assistance	***Health and Human Services***	**Housing and Community Affairs**	**Housing Opportunities Commission**
Does your agency have any programs to assist low-income households with **non-emergency** utility costs?	Maryland Home Energy Assistance Program (MEAP) for heating bills and Electric Universal Service Program (EUSP) current and past due electric bills.	DHCA does not have programs to assist residents with non-emergency utility costs.	HOC does not have programs to assist residents with non-emergency utility costs.
Renters or Homeowners	Renters and Homeowners.	Not applicable	Not applicable
What are the criteria for non-emergency assistance?	Gross income at or below 175% of poverty level. Income for single person household is $17,867. Income for 6 person household is $48,318. Each additional person raises income eligibility by $6,090 annually.	Not applicable	Not applicable
FY 08 Funding	MEAP = $1,727,800 EUSP current = $2,850,372 EUSP past due = $ 464,833 The above funding is directly from State thru 4/26 Each MEAP recipient also receives $40 County funded rebate = $207,640 thru 4/26	*Not applicable*	Not applicable
Households to be served in FY08	To date there have been 8,830 applicants. 5,191 households have been served through MEAP; 5,569 through EUSP for current bills and 504 through EUSP for past due bills.	Not applicable	Not applicable
FY09 Recommended Funding	Amount of State funds for FY09 not certain at this time. CE eliminated County rebate HHS Committee recommends $280,000 for County rebate	Not applicable	Not applicable
Households expected to be served in FY09	DHHS expects 10,500 applications of which about 8,400 households would be eligible.	Not applicable	Not applicable

Emergency Utility Assistance	Health and Human Services	Housing and Community Affairs	Housing Opportunities Commission
Does your agency have any programs to assist low-income households with **emergency** utility costs?	MEAP – about 41% of MEAP applicants are in an emergency situation. State grants for emergency assistance to children and families (EAFC) County grants (General Fund) Coordination with community providers	DHCA does not have programs to assist residents with emergency utility costs.	HOC does provide assistance with: Eviction Prevention Utility Disconnect Security Deposit Assistance
Renters or Homeowners	Renters and Homeowners.	Not applicable	Renters
What are the criteria for non-emergency assistance?	Utility disconnect notice or out of oil or propane and unable to fill tank Income and family size Reasons for inability to pay Citizenship (non-citizens are not eligible for State emergency grants)	Not applicable	Eviction Prevention – Must have eviction letter and court summons Utility Disconnect – Must have utility disconnect notice Security Deposit – Must have letter from landlord with move-in date and rent and deposit amounts Incomes between $34,809 and $59,477 adjusted for size
FY 08 Funding	$1,028,058 in State EAFC grants (about 40%-50% used to prevent utility cutoffs $1,384,570 in County grants (about 46% to prevent utility cutoffs)	Not applicable	$289,800 for staff costs (about 1/3 State funded) Direct benefit dollars come from DHHS - $578,746 thru December 2007
Households to be served in FY08	1,248 households will receive County grants	Not applicable	1,245 households have been served so far.
FY09 Recommended Funding	Amount of State funds for FY09 not certain at this time. $1,384,570 for County grants	Not applicable	$303,452 for staff costs (about 1/3 State funded) Direct benefit dollars come from DHHS
Households expected to be served in FY09	At least the same number of households	Not applicable	Expect 1,337 Additional staff may be needed to meet demand

Energy Efficiency (Weatherization)	Health and Human Services	Housing and Community Affairs	Housing Opportunities Commission
Does your agency have any programs to assist low-income households *with making* their homes **more energy efficient?**	DHHS does not have programs to help renter or homeowners improve the energy efficiency of their homes.	Weatherization Program (grant) Makes homes more energy efficient through caulking, insulating, and weather-stripping. May also provide *for furnace* replacement Single family home loan program can assist with roof, furnace, hot water heater, and appliance replacement Interest on loans ranges from 0% to 8% with terms up to 20 years	HOC does not have programs to help renter or homeowners improve the energy efficiency of their homes.
Renters or Homeowners	Not applicable	Homeowners or Renter Referrals for grant are from the MEAP program For renters, landlords must contribute 25% of the cost	Not applicable
What are the criteria for non-emergency assistance?	Not applicable	Grant program – Income ranging from \$12,360 for a one person household to \$41,970 for a household of 8 Loan program – Income ranging from \$18,200 for a household of 1 to \$62,300 for a household of 8	Not applicable
FY 08 Funding	Not applicable	\$164,680 was budgeted by \$258,574 has been received from the State	Not applicable
Households to be served in FY08	Not applicable	33 households have been weatherized 8 have received new furnaces 34 households *are underway* and will be weatherized in FY08	Not applicable
FY09 Recommended Funding	Not applicable	\$180,000 from the State of Maryland	Not applicable
Households expected to be served in FY09	Not applicable	Similar effort is expected in FY09	Not applicable
OTHER EFFORTS		In FY08, \$196,000 was provided to the Interfaith Housing Coalition for items not covered by the Weatherization including Energy Star appliances and high efficiency furnaces, air conditioners, and heat pumps.	

Faden, Michael

From: alfred.carr@gmail.com on behalf of Delegate Alfred Carr [alfred.carr@house.state.md.us]
Sent: Monday, May 12, 2008 2:31 PM
To: Faden, Michael
Cc: delegate@alcarr.org (Jackie)
Subject: County Fuel/Energy Tax resolution

Dear Council President Knapp,

I am writing to express my opposition to the proposed increase to the County's fuel energy tax. My concern is about the unfair burden this tax places on County residents who live in municipalities.

I represent Maryland's District 18 which has more municipal governments than any other state legislative district within the County.

Because the County's fuel energy tax is levied against the provider, it is passed through to municipal governments for basic government services such as street lighting. This is passed on to County residents of municipalities through their municipal property taxes.

Why should County residents who live in North Chevy Chase or Kensington be taxed on basic government services such as street lighting in a way that other County residents are not? The County itself is subject to this tax, but unlike for municipalities, the impact is revenue-netral.

The Maryland General Assembly granted Montgomery County broad authority to levy taxes such as the fuel energy tax. Since the tax is levied against the provider, its impact is magnified by the fact that it is subject to other state taxes. In recent years, the County Council has increased the tax rate to a level where it now having a significant impact on municipal budgets and on County residents living in municipalities. Further increases will exacerbate the problem.

Several other Counties in Maryland have fuel energy taxes, but Montgomery County is the only jurisdiction that burdens municipal residents in this way.

Per the attached attorney general's opinion, the County Council and the state legislature both have the authority to effect an exemption of municipal governments from the County's fuel energy tax. This can be done without losing fuel energy tax revenue from other entities such as federal government sites.

My view is that this is a basic tax fairness question independent of other municipal/county tax duplication discussions.

As you consider increasing this tax rate, please be aware that I am considering state legislation for introduction next year to change the County's authority for this tax including the exemption of municipal governments. I hope the Council will choose to exempt municipal governments from this tax even sooner and I look forward to further discussion.

Sincerely,
Al Carr
State Delegate
18th Legislative District

24

Oacl

Douglas F. Gansler
Attorney General

Katherine Winfree
Chief Deputy Attorney General

John B. Howard, Jr.
Deputy Attorney General

Robert A. Zarnoch
Assistant Attorney General
Counsel to the General Assembly

Sandra Benson Brantley
Bonnie A. Kirkland
Kathryn M. Rowe
Assistant Attorneys General

The Attorney General of Maryland

Office of Counsel to the General Assembly

January 17, 2008

The Honorable Alfred C. Carr, Jr.
222 Lowe House Office Building
Annapolis, MD 21401-1991

Dear Delegate Carr:

You have requested advice on how a municipal corporation in Montgomery County may be exempted from paying the County fuel-energy tax. While this tax is imposed on every person transmitting, distributing, manufacturing, producing, or supplying (provider) fuel and energy, and not imposed directly on the consumer, including a municipal corporation, it is my view that a municipal corporation may effectively be exempted through County or State legislation.

Montgomery County Code, Section 52-14 provides for a fuel-energy tax which is "levied and imposed on every person transmitting, distributing, manufacturing, producing, or supplying electricity, gas, steam, coal, fuel oil, or liquified petroleum gas in the County." The County Council is required to set rates, which may include establishing different rates for for different categories of final consumption. The tax is administered by the Director of Finance for the County. It is my understanding that, with the approval of the Public Service Commission, this tax is passed on to consumers through a separate line surcharge on the consumers' bills.

Counties do not have the inherent power to tax of taxation. However, the General Assembly has granted to Montgomery County broad power to impose excise taxes, Section 52-17, the constitutionality of which was upheld by the Court of Appeals. *Montgomery County v. Maryland Soft Drink Ass'n., Inc.*, 281 Md. 116 (1977). Further, the County is authorized to, from time to time, grant exemptions and to modify or repeal existing or future exemptions. But, because the consumer is not the entity upon which the tax is imposed, it would not be the entity to receive an exemption. However, it is my view

25

that the County could grant to the provider an exemption equivalent to the amount that would have been imposed as the surcharge upon a municipal corporation.

Article XI-A, § 2 prevents the General Assembly from enacting single charter county legislation on a subject covered by the Express Powers Act, Art. 25A, § 5. The Express Powers Act grants the authority to impose a property tax, but does not grant general taxing authority. Thus, the fuel-energy tax is not a matter covered by the express powers, and, as a result, the General Assembly has the authority to legislate in this area and require the exemption. Indeed, it has done so on a number of occasions. *See* Article 24, § 9-602 (Anne Arundel County tax); § 9-603 (Prince George's County tax); § 9-604 (Energy or Fuel tax in St. Mary's County).

Sincerely,

Bonnie A. Kirkland
Assistant Attorney General

BAK:as